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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

READING INTERNATIONAL, INC., et al., Plaintiffs and Appellants, v. MALULANI INVESTMENTS et al., Defendants, THE MALULANI GROUP, Intervener and Respondent.	B238331 (Los Angeles County Super. Ct. No. BC 461485)

APPEAL from a judgment of the Superior Court of Los Angeles County, Michelle R. Rosenblatt, Judge. Affirmed.

Hillel Chodos for Plaintiffs and Appellants.

Glaser Weil Fink Jacobs Howard Avchen & Shapiro, Peter C. Sheridan, James T. Grant and Mary Ann T. Nguyen for Intervener and Respondent.

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Appellants Reading International, Inc., and Reading Consolidated Holdings, Inc. (collectively Reading), filed an action against Malulani Investments, Ltd. (Malulani), and multiple other parties in a state court in Hawaii; respondent The Malulani Group, Ltd. (TMG) intervened. This action was settled in July 2009. In substance, the settlement agreement, negotiated and concluded in Hawaii, called for TMG to execute a promissory note in the amount of $6.75 million to Reading. On May 12, 2011, Reading filed the instant action against TMG for nonpayment of the note and other alleged breaches of the Hawaii settlement agreement. TMG moved to quash for lack of personal jurisdiction. The trial court granted the motion, finding neither general nor specific jurisdiction; Reading appealed. We affirm.

FACTS

We begin with the fact that on June 7, 2011, TMG offered to pay, and did pay, the principal balance of the note ($6.75 million) and some of the accrued interest, having given advanced notice of its intent to do so on May 9, 2011. According to Reading, this leaves "about $1,000,000 of additional fees and collection costs due under the note," which remain unpaid.

These facts on which TMG relies are drawn from the declaration under penalty of perjury of the president of TMG, Easton T. Manson.

TMG is a Hawaii corporation, having been incorporated in Hawaii in 1924. TMG has no employees residing in California; all of its employees live in Hawaii. TMG has no branch office or facility in California, has no bank accounts in California, does not direct advertising towards California residents, does not advertise in California, and has no telephone listing or mailing address in California. According to Manson, who has been involved with TMG since 2003, no board of directors or shareholder meetings are held in California.

TMG is registered with the California Secretary of State, has designated an agent for the service of process and is qualified to do business in California. But, according to Manson, "TMG has no business to conduct in California."

TMG is connected in various ways to entities that own property in California. One of the factual issues in the case is whether its connection with these entities are such as to impute their activities to TMG.

TMG is a member of MBL Palm Desert Investment LLC (MBL), a Texas entity, which owns property in Palm Desert, California. According to Manson, this entity is fully capitalized and all rents paid by the lessee of this property are paid to MBL. This property is not alleged to have any connection with the instant action.

TMG owns two undeveloped residential lots of 17,000 and 5,400 square feet in Robbins, located in Sutter County, California (Robbins property). Property taxes for both lots are approximately $100 per year. Manson estimates the value of both lots to be $15,000 each.

TMG owns 100 percent of the stock of Malulani, which is a Hawaii corporation that conducts no business in California and owns no property in California. Malulani in turn owns Langtry Farms, LLC, and Guenoc Winery, Inc., both being Delaware entities. Langtry Farms owns land in Northern California and is managed by Manson from Hawaii. Guenoc Winery also owns land, as well as a production facility, in Northern California. According to Manson, Malulani, Langtry Farms and Guenoc Winery are all fully capitalized with their own boards of directors and they operate independently of TMG.

It is significant that, with one exception, all of the actions required of TMG by the settlement agreement that concluded the Hawaii lawsuit by Reading were to take place in Hawaii. (Hawaii law was governing law per the settlement agreement.) Thus, the initial check was to be delivered in Hawaii, certain documents were to be delivered in Hawaii and the promissory note was secured by property located in Hawaii. The only exception was that TMG was to send payments to an address in Commerce, California.

Reading relies on the declaration of Michael D. Schochet, who was vice president, secretary and chief operating officer of TMG from January 1, 1988, to December 31, 2003, and consultant to TMG from January to August 2004; he was president of Guenoc Winery from April 2004 to February 2005.

According to Schochet, during the 1990's TMG acquired properties in California, including the Palm Desert property valued at $2.8 million. TMG also owned over 4,000 acres of prime agricultural land in Sutter Basin, California. Schochet also states that real estate assets owned by TMG, Malulani and Guenoc Winery "have been active continuously as businesses in California for over 55 years." According to Schochet, while it is true that TMG has no employees in California, it relies upon its "subsidiary offices and staff."

DISCUSSION

1. General and Specific Jurisdiction

"Personal jurisdiction may be either general or specific." (*DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 1090.) A nonresident defendant is subject to the forum's general jurisdiction when the defendant's contacts are substantial, continuous and systematic. (*Ibid.*) If the nonresident defendant does not have substantial and systematic contacts with the forum state, the defendant may be subject to specific jurisdiction if (1) the defendant has purposefully availed itself of forum benefits with respect to the matter in controversy, (2) the controversy is related to or arises out of the defendant's contacts with the forum, and (3) the exercise of jurisdiction would comport with fair play and substantial justice. (*Ibid*.)

2. The Schochet Declaration

In the instance of general jurisdiction, the focus is on the defendant's contacts with the forum at the time the complaint is served. (*DVI, Inc. v. Superior Court, supra,* 104 Cal.App.4th at p. 1101.) In a case involving specific jurisdiction, courts examine the defendant's contacts with the forum at the time of the events underlying the dispute. (*Ibid*.)

The flaw in the Schochet declaration is that it effectively stops in February 2005 when Schochet ceased to be president of Guenoc Winery. For the purposes of general jurisdiction, the relevant point in time is May 2011 when the instant complaint was filed. Because the complaint was predicated on the settlement that was effected in July 2009, the pertinent time for specific jurisdiction is July 2009.

The circumstance that Schochet's declaration is literally out of date may explain why the trial court ignored it. It is true that the declaration states that TMG owns the Palm Desert property, that it also owns the Robbins property and the mineral rights to 4,000 acres of land in Sutter Basin, California. However, the Palm Desert property is owed by MBL, not TMG, and, according to Manson, the only property that TMG owns in California is the Robbins property. In any event, it has been held that, standing alone, ownership of property in California does not support the exercise of personal jurisdiction (*Thomson v. Anderson* (2003) 113 Cal.App.4th 258, 271, citing *Shaffer v. Heitner* (1977) 433 U.S. 186, 209), which means that it is really of no moment whether TMG does or does not own the Palm Desert property, or the mineral rights in the Sutter Basin.[1]

There is an added reason why the Schochet declaration is not relevant. As TMG correctly observes, the standard of review in this appeal is whether the trial court's ruling is supported by substantial evidence. (*Pavlovich v. Superior Court* (2002) 29 Cal.4th 262, 273.) Thus, our focus is necessarily on the Manson declaration and whether it is substantial evidence that supports the trial court's ruling. It is an aspect of the substantial evidence standard that conflicts in the evidence are disregarded. (See generally 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 365, pp. 421-424.)

In sum, the Schochet declaration is of no assistance to Reading.

3. There Is No General Jurisdiction over TMG

TMG's contacts with California are not substantial, continuous and systematic, which are the requisites of general jurisdiction. (*DVI, Inc. v. Superior Court, supra,* 104 Cal.App.4th at p. 1090.) In fact, there really are no contacts, as property ownership, standing alone, is not a legally significant contact.

Reading contends that there is jurisdiction over TMG because of the activities of the business entities, such as MBL, with which TMG has connections. There are three

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1 None of the properties that TMG allegedly owns in California has any connection with the causes of action asserted in Reading's complaint. A state may exercise jurisdiction based on ownership of realty if the cause of action arises from or in connection with the realty. (Rest. 2d, Conflict of Laws, § 38.)

requirements before jurisdiction can be imposed on this theory. TMG and MBL, to use this entity as an example, must be alter egos; MBL must perform a function that assists TMG in its own business, referred to as "representative services," a species of agency; and TMG's control over MBL must be pervasive and continual. (*DVI, Inc. v. Superior Court, supra,* 104 Cal.App.4th at pp. 1093-1094.)

There is simply no evidence that satisfies any of these requirements.

Reading seeks to meet these aforesaid requirements by claiming that TMG, Malulani, Langtry Farms and Guenoc Winery are profitable only if they are examined as a group, as only TMG shows a profit and the others do not. Even if this is true, this fact does not speak to the three aforesaid requirements. It is certainly a plausible *theory* that there is a great deal of coordination between TMG and the other entities; for one, Manson is president of TMG and is also the manager of Langtry Farms. But a theory is not fact or evidence, and there are neither facts of record, nor evidence, that TMG controls Langtry Farms, much less is there any evidence about the quality (pervasive and continual) of control.

In addition, the representative services theory cannot be applied in the case of a holding company like TMG, i.e., by definition an operating company like MBL cannot perform the functions of its holding company. (*DVI, Inc. v. Superior Court, supra,* 104 Cal.App.4th at p. 1093.) Finally, there is no evidence that any of the entities referred to are alter egos of TMG. There is, however, evidence in the form of Manson's declaration that they are not alter egos.

It is also true that we are required to determine whether there is substantial evidence that supports the trial court's ruling, not whether Reading's case should be believed. According to Manson, each of the other entities are fully capitalized and are managed independently of each other. This is substantial evidence; and it is worth adding that it is unrebutted by *evidence* (as distinct from counsel's conjectures), although it is not a requirement that it should be so.

The absence of any cognizable contacts between TMG and California precludes that invocation of general jurisdiction.

4. There Is No Specific Jurisdiction over TMG

To qualify to do business in California, a foreign corporation must designate an agent for the service of process. (Corp. Code, § 2105.) When an agent has been appointed for service of process, California has jurisdiction over only causes of action arising from business done in the state. (*Gray Line Tours v. Reynolds Electrical & Engineering Co.* (1987) 193 Cal.App.3d 190, 194.) Thus, Reading's claim is without merit that jurisdiction is conferred simply by appointing an agent for the services of process and by qualifying to do business in California.

Also without merit is the claim that the circumstance that payment is made in California confers jurisdiction. The law is explicitly to the contrary. (*Floyd J. Harkness Co. v. Amezcua* (1976) 60 Cal.App.3d 687, 692.)

We have already stated the requirements for the exercise of specific jurisdiction.[2] It is evident that the entire settlement in July 2009 was centered on Hawaii and that California had no connection with the settlement at all. Every single act required as part of the somewhat complex settlement was to be performed, and was performed, in Hawaii. Thus, the controversy definitely does not arise out of TMG's (nonexistent) contacts with California. There is therefore no specific jurisdiction over TMG.

5. The Substantial Evidence Standard

We agree with TMG that Reading has ignored the substantial evidence standard, choosing instead to reargue their case to the exclusion of the evidence that supports the trial court's ruling. In disposing of the contentions on appeal, we have not had occasion to stress evidence that shows that TMG is a Hawaii corporation, and has no contacts of any kind with California, i.e., it maintains no offices or facilities here, has no employees, bank accounts or telephone listings here and does not even advertise in this state. Regrettably, even though respondent contended vigorously that Reading has ignored the

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[2] (1) The defendant has purposefully availed itself of forum benefits with respect to the matter in controversy; (2) the controversy is related to or arises out of the defendant's contacts with the forum; and (3) the exercise of jurisdiction would comport with fair play and substantial justice.

substantial evidence standard, Reading's reply brief continues the quixotic campaign of ignoring the governing standard of review, which requires a consideration of evidence that favors TMG and which supports the trial court's ruling. While we cannot agree with TMG that, standing alone, this is enough to dispose of the appeal, it certainly is not a winning strategy to ignore the applicable standard of review.

Finally, on the general topic of standards, we find unacceptable quoting an off-the-cuff remark by a federal district court judge in California that there was concurrent jurisdiction over TMG. The context of the remark was the chastisement by the judge of Reading for forum shopping. In any event, it is basic that an extemporaneous remark by a federal judge is not entitled to any weight in this court.

6. The Fee Award

TMG moved for an award of attorney fees in the amount of $228,793[3] and costs. The trial court awarded $197,855 in fees. The reduction of $30,983 was approximately 14 percent of the total fees sought.

Reading contends that attorney fees could not be awarded given that the court ruled it did not have jurisdiction. *Shisler v. Sanfer Sports Cars, Inc.* (2008) 167 Cal.App.4th 1, 9, held expressly to the contrary, concluding: "Since the trial court had jurisdiction of the subject matter and jurisdiction over plaintiffs, there was no jurisdictional impediment to defendant's specially appearing to call upon the trial court to enforce its statutory right to fees." Reading claims *Shisler* "was incorrectly decided" and doesn't cite any California law.

Reading is wrong on both counts. *Shisler* cites no less than three California appellate decisions that are on point and analyzes them in detail. We agree with the appellate court's analysis, which is thorough and persuasive, and with the conclusion reached. Unfortunately, appellant has not given an explanation why *Shisler* was "incorrectly decided" and we therefore ignore this comment.

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[3] Cents are omitted throughout.

Reading claims the fees were excessive because counsel for Reading spent less than 100 hours without any assistance from other lawyers, where counsel for TMG spent nearly 500 hours on the motion to quash and the discovery motion. TMG correctly points out that such comparisons are an invalid approach to determining fees.[4] After the trial court's deduction, TMG's counsel was paid for roughly 420 hours of work. While this amount of time spent on two motions may seem high, on review of a fee award, the issue is whether the trial court abused its discretion, not whether the reviewing court agrees with the award. (9 Witkin, Cal. Procedure, *supra*, Appeal, § 363(16), p. 420.) We see no abuse of discretion here.

Finally, Reading contends that fees should not have been awarded because TMG was not the prevailing party. To claim that Reading was successful because TMG paid the note overlooks the fact that three days prior to the filing of the action, TMG gave notice that it would pay the note, which makes one wonder why this lawsuit was filed at all. The fact of the matter is Reading's action was dismissed and it now must pay nearly $200,000 in attorney fees, plus costs. This is not our definition of success.

DISPOSITION

The judgment (order) is affirmed.

FLIER, Acting P. J.

WE CONCUR:

GRIMES, J.

SORTINO, J.*

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[4] Obviously, the tasks faced by competing litigants are frequently sharply different, requiring different expenditures of time and effort.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.